IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

April 27, 2006 Session

WEYERHAEUSER COMPANY v. LOREN L. CHUMLEY, COMMISSIONER OF REVENUE, STATE OF TENNESSEE

Appeal from the Chancery Court for Davidson County
No. 03-818-I Claudia C. Bonnyman, Judge

No. M2005-00212-COA-R3-CV - Filed on September 7, 2007

This appeal involves the denial of a claim for the job tax credit, provided in TENN. CODE ANN. § 67-4-908(1994), by the Commissioner of Revenue. The Appellant acquired the Kingsport Fine Paper and Cut Sheet Plant (Paper Plant) located in Kingsport, Tennessee from the Mead Corporation. The day the Appellant acquired the Paper Plant; the Mead Corporation terminated all 820 of its full-time employees. The following day, the Appellant hired 615 of the former Mead Corporation's employees. The Appellant later claimed the job tax credit, based on the hiring of the 615 former employees of Mead Corporation. The Commissioner of Revenue denied the Appellant's claim, and the trial court affirmed the Commissioner. On appeal, the Appellant claims that the 615 jobs, on which the credits are based, are "net new full-time employee job[s]" pursuant to TENN. CODE ANN. § 67-4-908(b)(2)(A)(1994). We conclude that the 615 jobs are not "net new full time employee job[s]". Therefore, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JERRY SCOTT, SR. J., delivered the opinion of the court, in which WILLIAM BRYAN CAIN, J., and FRANK G. CLEMENT, JR., J., joined.

Michael D. Sontag and Christopher L. Haley, Nashville, Tennessee, for the appellant, Weyerhaeuser Company.

Paul G. Summers, Attorney General, and Stephen Nunn, Nashville, Tennessee, for the appellee, Loren L. Chumley.

OPINION

Weyerhaeuser Company, the Appellant, is the successor-in-interest to Willamette Industries Inc. by merger. Willamette acquired the Kingsport Fine Paper and Cut Sheet Plant (Paper Plant) located in Kingsport, Tennessee from the Mead Corporation, which had operated the plant from 1920 until May 2, 1995. On the day Willamette acquired the plant, Mead Corporation terminated all 820 of its full-time employees. The following day, Willamette hired 615 of the former Mead Corporation employees. The appellant later claimed the job tax credit created at TENN. CODE ANN. § 67-4-908(1994), based on the hiring of the 615 former employees of Mead Corporation.

Initially, the Commissioner of Revenue approved the Appellant's claim for the job tax credit. However, the Department of Revenue later audited the Appellant and assessed the Appellant a deficiency in the amount of $1,433,185, including interest and penalties. The Appellant paid the assessed amount and filed a claim for a refund, relying on the job tax credit statute. The Commissioner of Revenue denied the claim for a refund, and the trial court affirmed the Commissioner.

On appeal, the Appellant claims that the trial court erred by concluding that the Appellant's claim for the job tax credit was properly denied by the Department of Revenue. To support its claim, the Appellant asserts that the Mead Corporation is a separate entity, and for tax purposes, the number of employees it employed prior to the sale should not be considered when determining whether the Appellant is entitled to claim the job tax credit. Also, the Appellant asserts that the trial court erred in its finding because its massive training program changed the 615 jobs such that they became new positions.

Standard of Review

"Issues of statutory interpretation are questions of law which this Court reviews *de novo*, with no presumption of correctness attached to the determination of the trial court." Nissan N. Am., Inc. v. Haislip, 155 S.W.3d 104, 106 (Tenn. Ct. App. 2004) (citing State v. Morrow, 75 S.W.3d 919, 921 (Tenn. 2002)). "[W]hen there is no conflict in the evidence as to any material fact . . ., the question on appeal is one of law, and [the] scope of review is *de novo* with no presumption of correctness . . . ." Union Carbide Corp. v. Huddleston, 854 S.W.2d 87, 91 (Tenn. 1993) (citing Estate of Adkins v. White Consol. Indus., Inc., 788 S.W.2d 815, 817 (Tenn. Ct. App. 1989)). The parties in this case agreed that there were no material facts in dispute. Therefore, this Court has reviewed the trial court's decision de novo with no presumption of correctness.

Analysis

The issue on appeal is whether the trial court erred in determining that the Appellant's claim for the job tax credits was not proper because the 615 jobs, on which the credit is based, are not "net new full-time employee job[s]" pursuant to TENN. CODE ANN. § 67-4-908(b)(2)(A)(1994)(now codified at TENN. CODE ANN. § 67-4-2109(c)(2)(A)(2006)), which stated:

> A job tax credit of two thousand dollars ($2000) for each net new full-time employee job, when it is filled during the fiscal year and in existence at the end of the fiscal year, shall be allowed against a business' franchise tax liability for that year . . . .

The version of the statute under consideration was enacted on April 12, 1994, as Chapter 761 of the Public Acts of 1994 as amended in 1999. Our consideration of the statute is limited to the version that existed in 1995, not a prior version nor any subsequent version.

The answer to this issue requires this Court to determine the proper statutory construction of the 1994 job tax credit statute. When construing or interpreting statutes, it is this Court's duty "to ascertain and carry out the legislature's intent without unduly restricting or expanding a statute beyond its intended scope." Lavin v. Jordan, 16 S.W.3d 362, 365 (Tenn. 2000). In so doing, we are to "examine the 'natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language.' Where the language of the statute is clear and unambiguous, then this Court will give effect to the statute according to the plain meaning of its terms." Id. at 365(citations omitted).

Furthermore, for this Court to interpret a tax statute, we must look to the rules of construction that apply specifically to tax statutes. Statutes imposing a tax should be "strictly construed against the taxing authority." Covington Pike Toyota Inc. v. Cardwell, 829 S.W.2d 132, 135 (Tenn. 1992). Statutes providing exceptions such as tax credits, deductions and exemptions from taxation should be construed strictly against the taxpayer. SunTrust Bank, Nashville v. Johnson, 46 S.W.3d 216, 226-27 (Tenn. Ct. App. 2000).

To determine whether the trial court erred in concluding that the Appellant was properly denied the job tax credit, this Court must use the rules of construction to determine the meaning of "net new full-time employee job." A "full-time employee job" is defined in the Act as a "permanent, rather than seasonal or part time, employment position." TENN. CODE ANN. § 67-4-908(b)(1)(B)(1994). "[F]ull time employee job" is then modified by the adjectives "net" and "new." Therefore, for a taxpayer to be eligible for a job tax credit, the full-time employee jobs, upon which the claim for the job tax credit is based, must be both "net" and "new" permanent employment positions. However, the statute defines neither "new" nor "net."

The word "net," means, among other things, "remaining after the deduction of all charges, outlay, or loss." Webster's Third New International Dictionary, 1519 (1993). The word "new" is defined as "having existed or having been made but a short time, having originated or occurred lately, not early or long in being." Id. at 1522. In the context of the statute in this case, "net" means the number of "new" full-time employee jobs remaining after the number of full-time employee job terminations that occurred during the taxable year are deducted from the number of "new" full-time employee jobs that were filled during the taxable year. For example, if a company filled 40 new full-time employee jobs and terminated 15 full-time employee jobs then the number of "net new full time employee jobs" would be 25.

In this case, Willamette acquired the Paper Plant from the Mead Corporation on May 2, 1995. On the same day Willamette acquired the Paper Plant, the Mead Corporation terminated all 820 of its full-time employees. The following day, the Appellant hired 615 of the Mead Corporation's former employees. The Appellant claims that since the Mead Corporation is a separate entity, any actions, including the termination of 820 employees, taken by the Mead Corporation should not be considered in determining the Appellant's eligibility for the job tax credits.

In making this claim, the Appellant relies on the "separate entity rule," which for the purposes of the franchise and excise tax, requires that each taxpayer be taxed separately. The Appellant argues that because of the "separate entity rule," the trial court erred in denying the Appellant's claim for the job tax credit by finding that the Appellant had a net loss of "net new full-time employee jobs" by relying on the fact that the Mead Corporation terminated 820 employees the day before the Appellant's acquisition of the Paper Plant.

If the "separate entity rule" is strictly applied to the statute in this case, taxpayers could receive large tax breaks by simply buying a company and meeting the minimal statutory capital investment requirement of $500,000. TENN. CODE ANN. § 67-4-908(b)(2)(A)(1994). For example, a paper company acquiring all the assets of a lumber company with 600 employees prior to the acquisition could receive a large benefit, if, after acquiring the assets of the lumber company, the paper company made $500,000 in capital investments, meeting the minimal capital investment requirement, and hired 500 of the employees previously employed by the lumber company. The company could claim the job tax credit for 500 jobs amounting to $1,000,000. The $1,000,000 job tax credit could be carried forward for 15 years. TENN. CODE ANN. § 67-4-908(b)(2)(E)(1994). Assuming that the paper company's franchise tax liability is $100,000 per year, the paper company would not have to pay any franchise tax for ten (10) years. TENN. CODE ANN. § 67-4-904(1994). The State of Tennessee would essentially be paying for the $500,000 in capital investment that the paper company made and part of the purchase price of the lumber company without any increase in jobs in Tennessee. It is doubtful that the General Assembly intended such a result.

Additionally, in construing a statute, "(a) court's construction of a statute will more likely hew to the General Assembly's expressed intent if the court approaches the statutory text believing that the General Assembly chose its words deliberately." Sun Trust Bank, 46 S.W.3d at 224. The Court should merely "construe the statute's language in the context of the entire statute and in light of the statute's general purpose." Id. "When the language is ambiguous and does not yield a clear interpretation, the court may consult the legislative history for additional interpretive guidance." Carter v. State, 952 S.W.2d 417, 419 (Tenn. 1997). We find that the language in the statute in this case can be termed ambiguous, and therefore, the legislative history provides guidance.

On March 1, 1994, Representative Matthew Kisber commented on House Bill 2544, which addressed the 1994 version of the job tax credit. Representative Kisber stated that "there must be 25 new jobs created and filled before the credit would kick in." Audio Tape: 98th General Assembly, Representative Matthew Kisber addressing the House of Representatives on March 1, 1994 regarding House Bill 2544. The word "created" in Representative Kisber's statement implies that the job must not have previously existed. Based on the statutory language and legislative history, we find that the general purpose of the statute in this case is to provide an incentive for companies to create new jobs and increase employment in the State of Tennessee by either expanding existing operations or locating new operations within the State of Tennessee. Therefore, for the general purpose to be met in this case, the employer must prove that it created at least 25 "net new jobs" resulting in an increase in employment in Tennessee.

The day the Appellant acquired the Paper Plant from the Mead Corporation, Mead terminated 820 employees. The following day, the Appellant hired 615 employees to fill positions that previously existed at Mead Corporation, resulting in a decrease in employment in Tennessee by 205 workers. Therefore, allowing the Appellant to claim the job tax credit for the 615 employees is not in accord with the general purpose of the statute.

As stated above, statutes providing exceptions such as credits, deductions and exemptions, from taxation should be construed strictly against the taxpayer. Sun Trust Bank, 46 S.W.3d at 226-27. Construing the statute strictly against the taxpayer as we must, we hold that the General Assembly did not intend for the "separate entity rule" to be strictly applied to the job tax credit statute, and that the Commissioner can consider the fact that Mead terminated 820 employees the day before the hiring of the 615 employees when determining whether the Appellant is entitled to the job tax credit.

Since the Mead Corporation terminated 820 full-time employee jobs and the Appellant only filled 615 full-time employee jobs, the Appellant had a net loss of 205 full-time employee jobs. Therefore, the Appellant filled no "net new full-time employee jobs."

The Appellant also claims that it created new jobs by investing large amounts of money in updating the plant and training its employees, and as a result, should be allowed to claim the job tax credit. As stated above, for the Appellant to claim the job tax credit, the full-time employee jobs, on which the claim is based, must be both "net" and "new" full time employee jobs. Investment in training employees and updating the equipment in a plant does no entitle a corporation to the job tax credit. Therefore, this claim is without merit, and the trial court did not err in finding that the Commissioner correctly denied the Appellant's claim for the job tax credit pursuant to TENN. CODE ANN. § 67-4-908(b)(2)(A)(1994)(now TENN. CODE ANN. § 67-4-2109(c)(2)(A)(2006).

Conclusion

Finding no error, the judgment of the trial court is affirmed and remanded for the calculation of the attorneys' fees and expenses to which the Commissioner is entitled pursuant to TENN. CODE ANN. § 67-1-1803(d)(2006). Costs of the appeal are assessed against the Appellant, Weyerhaeuser Company and its surety.

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Jerry Scott, Senior Judge